IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-6584

In the Matter of

SHERYL ANN TRAPP, DEE ANN TRAPP,
and DUANE EDWIN TRAPP, Minors,

ROBERT EMERY TRAPP, Father,
LINDA MAE TRAPP, Mother and
Appellant.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

APPELLANT'S SUPPLEMENTAL MEMORANDA

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The appellant, Linda Mae Trapp, makes the following responses to the series of questions propounded by the Office of the Clerk of this Court in its letter of March 29, 1982:

I.

The child, Robert Emery Trapp, is now 14 years old (born 1-9-68); Sheryl Ann Trapp is almost 13 (born 4-25-69); Dee Ann Elaine Trapp is 12 (born 4-7-70); and Duane Edwin Trapp is 9 (born 9-8-72). None of the children have reached the age of majority.

The oldest child, Robert, has been returned to his parents and is living with his mother (the appellant) and his stepfather in Kansas City, Jackson County, Missouri.

The three youngest children continue to be in the legal custody of the Henry County Office of the Missouri Division of Family Services under the order of custody entered in the neglect proceeding on January 2, 1973, by the Juvenile Division of the Circuit Court of Henry County, Missouri. The children are living in foster family homes where they have been placed by the Division of Family Services which retains the right to supervise the care of the children and to resume custody thereof. Sheryl is living with foster parents who have been permitted to remove her to Mounds, Oklahoma. Dee Ann is living with foster parents in Clinton, Henry County, Missouri. Duane is living with foster parents who have been permitted to remove him to Evergreen, Colorado.

None of the three youngest children have been adopted by their foster parents, and no proceedings for adoption are pending. The legal status of these children has not changed in any way that affects the questions presented in the jurisdictional statement in this case.

II.

The children's father, Robert Emery Trapp, is now 42 years old (born 8-18-39) and is living in Kansas City, Jackson County, Missouri. The children's mother (the appellant) is 32 (born 12-7-49) and since April of 1977, has been married to and living with Robert Brault in Kansas City, Jackson County, Missouri. Appellant has no children other than the four described herein, and she has had an operation which prevents her from having any more children.

Mr. Brault is 26 years old (born 11-6-55) and has no children of his own. He has developed a close relationship with appellant's oldest child, Robert, and is endeavoring with appellant to secure the return of her three youngest children.

The parental rights of appellant and the children's father have not been terminated with respect to any of their natural children. The legal status of the parents has not changed in any way that affects the questions presented in the jurisdictional statement in this case.[1]

III.

Sections 211.031 and 211.181 RSMo 1969 (J.S. App. E at 1, 2-3) have been amended as appears in §§211.031 and 211.281 RSMo Supp. 1981 which are set forth in the Appendix hereto. None of the other statutory provisions involved has been amended.

The amendment of §211.181 has in no way affected any of the seven questions presented in the jurisdictional statement in this

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[1] The fact of appellant's remarriage does not affect her parental rights. Missouri recognizes that the rights of the parents are not joint, but several; the right of each parent to the companionship, care, custody, and management of his or her minor children is separate and distinct from the right of the other parent. §211.477 RSMo 1978; §211.501 RSMo 1969.

case.

The amendment of §211.031 affects appellant's subsidiary Question I(A) alone and only in part. See J.S. at 20-30. The neglect standard embodied in §211.031(1)(a) RSMo 1969 -- "proper support . . ., medical, surgical or other care necessary for [the child's] well-being" -- remains unchanged in §211.031.1(1)(a) RSMo Supp. 1981. The neglect standard embodied in §211.031(1)(b) RSMo 1969 -- "otherwise without proper care, custody or support" -- likewise remains unchanged in §211.031.1(1)(b) RSMo Supp. 1981. The neglect standard embodied in §211.031(1)(c) RSMo 1969 -- "behavior, environment or associations . . . injurious to [the child's] welfare or to the welfare of others" -- has been changed in §211.031.1(2)(d) RSMo Supp. 1981 to: "behavior or associations . . . injurious to [the child's] welfare or to the welfare of others."

In other words, under the amendment of §211.031 Missouri no longer has the standard of an "environment . . . injurious to [the child's] welfare," but it retains the other vague and overboard standards of "proper care, custody or support," and of "proper . . . care necessary for [the child's] well-being."

IV.

The termination proceeding at issue in In re Trapp, 528 S.W.2d 489 (Mo.App. 1975), was reversed outright. The proceeding for the termination of parental rights to the child, Sheryl, at issue in State ex rel. Brault v. Kyser, 562 S.W.2d 172 (Mo.App. 1978), is still pending on appellant's motion to dismiss. See J.S. at 15, 16. The Missouri Supreme Court has not entered any orders with regard to the latter proceeding since its decision in In the Matter of Sheryl Ann Trapp, et al., 593 S.W.2d 193 (Mo.banc 1980).

V.

No aspects of this case have become moot since appellant's last filing with this Court, and no other relevant events have occurred which might affect this case.

VI.

In light of this Court's decision in Santosky v. Kramer, No. 80-5889 (March 24, 1982), appellant submits that the

appropriate disposition of the appeal in this case is to note probable jurisdiction and set the case for plenary briefing and argument. Santosky deals with the termination or permanent deprivation of parental rights while this case involves the "temporary" or nonfinal deprivation of such rights. The holding in Santosky is therefore not necessarily dispositive of appellant's claim under Question IV (J.S. at 40-41) that due process requires at least the "clear and convincing evidence" standard of proof in a "temporary" neglect proceeding. At the same time, the reasoning in Santosky plainly supports the substantiality of the federal question presented in appellant's Question IV.

The substantial nature of several of the other questions presented has been recognized by this Court. Appellant's claim under Question I(A) (J.S. at 20-30) that the Missouri neglect statutes are unconstitutionally vague and overbroad is essentially the same as Question I in the jurisdictional statement in Doe v. Delaware, No. 79-5932, as to which this Court noted probable jurisdiction. 445 U.S. 942 (1980).

Appellant's claim under Question I(B) (J.S. at 30-34) that due process requires the showing of a threshold of harm sufficient to demonstrate a compelling state interest, is essentially the same as Question III in the jurisdictional statement in Doe v. Delaware, as to which this Court noted probable jurisdiction as aforesaid. Although the appeal of that case was finally dismissed, it was not "for want of a substantial federal question," but "for want of a properly presented federal question." 450 U.S. 392 (1981).

Respectfully submitted,

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